

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NICK JAMES GONZALEZ,

Plaintiff,

v.

No. CIV-14-1163 JB/SMV

GERMAN FRANCO, MICHELLE BOYER,
NEW MEXICO CORRECTIONS
DEPARTMENT SUPERVISORS
ADMINISTRATORS, and GARY MARCIAL,¹

Defendants.

**ORDER DENYING MOTION TO PROCEED
ON APPEAL WITHOUT PREPAYMENT OF COSTS OR FEES**

THIS MATTER comes before the Court on the Plaintiff's Motion for Leave to Proceed on Appeal without Prepayment of Costs or Fees, filed November 23, 2015 (Doc. 51)("Motion"). Plaintiff Nick James Gonzalez has attempted to appeal two interlocutory orders dismissing some claims on initial screening. See Motion to Reinstate Appeal Proceedings, and to have Case Decided by Appellate Court, filed October 29, 2015 (Doc. 41); Notice of Appeal, filed November 18, 2015 (Doc. 46); Memorandum Opinion and Order, filed June 30, 2015 (Doc. 19)("June 30 Order"); Memorandum Opinion and Order, filed November 2, 2015 (Doc. 40)("November 2 Order").

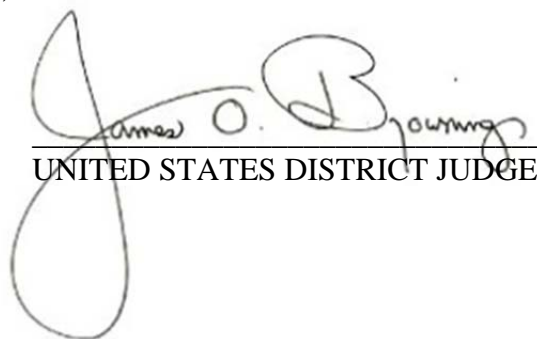
These appeals are premature. Therefore, being fully advised in the premises, the Court concludes that the motion to appeal in forma pauperis lacks a sound basis in the governing law, or in the facts and circumstances of the case, and the Court will deny the Motion. See 28 U.S.C. §

¹In a Memorandum Opinion and Order that the Court issued on June 30, 2015 (Doc. 19), the Court dismissed Defendants German Franco, Michelle Boyer, and "New Mexico Corrections Department Supervisors Administrators." Defendant and unit manager Gary Maciel is the only remaining Defendant. Plaintiff Nick James Gonzalez refers to Defendant Maciel as "Marcial," but Maciel's Answer corrects his spelling. See Answer to Complaint for Defendant Gary Maciel, filed August 31, 2015 (Doc. 36).

1915(a)(3).

With limited exceptions not applicable here, only final decisions of the district court may be appealed. See 28 U.S.C. § 1291. See also Riley v. Kennedy, 553 U.S. 406, 419 (2008) (describing final decisions as those that end the litigation on the merits and leave nothing for the court to do but execute the judgment). The Orders that Gonzalez appeals dismissed some claims against some parties, but not the entire case. See June 30 Order at 6-7; November 30 Order at 2. The Court has not entered final judgment. See Fed. R. Civ. P. 58. Various motions -- including a request that the Court reconsider its preliminary dismissal of certain claims -- remain pending. See, e.g., Objections, filed November 19, 2015 (Doc. 49). These facts show that the District Court case remains ongoing. The appeals are premature, and Gonzalez' Motion lacks a sound basis in the applicable law, and in the facts and circumstances of the case.

IT IS ORDERED that the Motion for Leave to Proceed on Appeal without Prepayment of Costs or Fees, filed November 23, 2015 (Doc. 51), is denied.



UNITED STATES DISTRICT JUDGE

Parties and Counsel:

Nick James Gonzalez
Penitentiary of New Mexico
Santa Fe, New Mexico

Plaintiff pro se

Nancy L. Vincent
New Mexico Corrections Department
Santa Fe, New Mexico

Attorney for Defendant Gary Maciel